

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 4:04-CV-40249-FDS

REGINA ANKRAH AND ISAAC)
OWUSU-AFRIYIE, AS CO-)
EXECUTORS OF THE ESTATE OF)
ANGELINA OWUSU-AFRIYIE,)
Plaintiffs)
)
v.)
)
THE UNITED STATES OF AMERICA,)
KENNETH K. GERWECK, M.D., AND)
SANDRA L. SALERNO, R.N.)
Defendant)

**ANSWER OF THE DEFENDANT, KENNETH K. GERWECK, M.D.,
TO PLAINTIFFS' COMPLAINT AND DEMAND FOR JURY TRIAL**

Answering the numbered paragraphs of the Plaintiffs' Complaint, the Defendant, Kenneth K. Gerweck, M.D., admits, denies, and alleges as follows:

COUNT I

1. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
4. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
5. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.

6. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
7. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
8. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
 - a. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
 - b. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
 - c. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
 - d. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
 - e. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT II

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT III

1. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
- 2.[sic] The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
- 3.[sic] The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
- 4.[sic] Insofar as this Paragraph of the Plaintiff's Complaint contains no allegations directed to it, no answer is required of the Defendant, Mercy Hospital.
- 5.[sic] Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT IV

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
4. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

5. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
6. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
7. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT V

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT VI

1. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
2. The Defendant, Kenneth K. Gerwick, M.D., admits the allegations contained in this Paragraph of the Plaintiff's Complaint.
3. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
4. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.

5. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.
6. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.
 - a. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.
 - b. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.
 - c. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.
 - d. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.
 - e. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT VII

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT VIII

1. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
2. The Defendant, Kenneth K. Gerweck, M.D., admits the allegations contained in this Paragraph of the Plaintiff's Complaint.

3. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
4. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
5. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.
6. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT IX

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
4. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
5. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
6. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
7. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT X

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. The Defendant, Kenneth K. Gerweck, M.D., denies the allegations contained in this Paragraph of the Plaintiff's Complaint.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT XI

1. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
4. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
5. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
6. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
 - a. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
 - b. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

- c. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
- d. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.
- e. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT XII

- 1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
- 2. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
- 3. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT XIII

- 1. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
- 2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
- 2.[sic] The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
- 3.[sic] The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.

4.[sic] Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

5.[sic] Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT XIV

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
3. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
4. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
5. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
6. The Defendant, Kenneth K. Gerweck, M.D., is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph of the Plaintiffs' Complaint and therefore calls upon the Plaintiffs to prove the same.
7. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

COUNT XV

1. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
2. The Defendant, Kenneth K. Gerweck, M.D., repeats and realleges his answers to the preceding paragraphs as if set forth fully herein.
3. Insofar as the allegations contained in this Paragraph of the Plaintiffs' Complaint are against another party, no answer is required of the Defendant, Kenneth K. Gerweck, M.D.

WHEREFORE, THE DEFENDANT, KENNETH K. GERWECK, M.D., DENIES THAT THE PLAINTIFFS ARE ENTITLED TO JUDGMENT AS DEMANDED.

FIRST AFFIRMATIVE DEFENSE

The defendant, Kenneth K. Gerweck, M.D., states that the action is barred by the applicable statute of limitations and statute of repose.

SECOND AFFIRMATIVE DEFENSE

The defendant, Kenneth K. Gerweck, M.D., states that if the plaintiff suffered injuries or damages, as alleged, such injuries or damages were caused by someone for whose conduct the defendant, Kenneth K. Gerweck, M.D., was not and is not legally responsible.

THIRD AFFIRMATIVE DEFENSE

The defendant, Kenneth K. Gerweck, M.D., states that the negligence of the plaintiff was greater than the alleged negligence of the defendant, Kenneth K. Gerweck, M.D., and that such negligence of the plaintiff contributed to his alleged injury and, therefore, the plaintiff is barred from recovery under M.G.L. c. 231, § 85.

FOURTH AFFIRMATIVE DEFENSE

The defendant, Kenneth K. Gerweck, M.D., states that the plaintiff was contributorily negligent and that the damages, if any, recovered by the plaintiff from the defendant, Kenneth K. Gerweck, M.D., should be reduced in proportion to the said negligence of the plaintiff in accordance with M.G.L. c. 231, § 85.

FIFTH AFFIRMATIVE DEFENSE

The defendant, Kenneth K. Gerweck, M.D., states that the amount of recovery for alleged conscious pain and suffering, if any, is limited to \$500,000.00 by the provisions set forth in M.G.L. c. 231, § 60H.

SIXTH AFFIRMATIVE DEFENSE

The defendant, Kenneth K. Gerweck, M.D., states that the plaintiff's recovery for past and future medical expenses is limited pursuant to the provisions of M.G.L. c. 231, § 60G.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to M.G.L. c. 231, § 60B (Chapter 362 of the Acts of 1975), it is requested that a tribunal be convened within fifteen days to afford the plaintiff an opportunity to present an offer of proof and substantiating evidence sufficient to raise a legitimate question of liability appropriate for judicial inquiry.

EIGHTH AFFIRMATIVE DEFENSE

By way of Affirmative Defense, to the extent that the plaintiff did not expressly consent to treatment by the Defendant, Kenneth K. Gerweck, M.D., a reasonable person in like circumstances would have so consented.

NINTH AFFIRMATIVE DEFENSE

By way of Affirmative Defense, any risk which was not disclosed to the plaintiff, was not material to the decision to undergo treatment.

TENTH AFFIRMATIVE DEFENSE

By way of Affirmative Defense, plaintiff consented to all actions or inactions of the Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the plaintiff is barred from recovery for insufficiency of service of process.

TWELFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the plaintiff is barred from recovery for insufficiency of service.

THIRTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant, Kenneth K. Gerweck, M.D., states that the plaintiff and/or the plaintiff's decedent failed to mitigate their damages and therefore is barred from recovery.

FOURTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the plaintiff is barred from recovery for failure to state a claim upon which relief can be granted.

FIFTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants, Kenneth K. Gerweck, M.D., states that his actions were neither the proximate nor actual cause of any damages suffered by the plaintiff.

SIXTEENTH AFFIRMATIVE DEFENSE

The defendant, Kenneth K. Gerweck, M.D., was at the time of this incident, a public employee acting within the scope of his employment and, therefore, is immune to personal liability pursuant to M.G.L. c. 258, § 2.

SEVENTEENTH AFFIRMATIVE DEFENSE

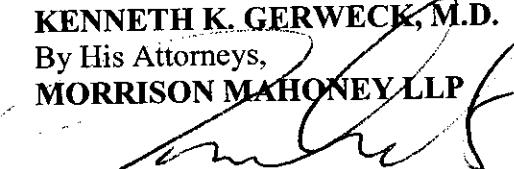
The plaintiffs failed to properly present their claim in writing to the Executive Officer of the University of Massachusetts within two (2) years of the time the cause of action arose pursuant to M.G.L. c. 258, § 4.

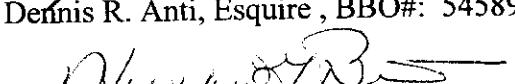
JURY DEMAND

The Defendant, Kenneth K. Gerweck, M.D., demands a trial by jury on all issues. WHEREFORE, the Defendant, Kenneth K. Gerweck, M.D., demands that:

1. This case be dismissed; and
2. That he be awarded his costs.

The Defendant
KENNETH K. GERWECK, M.D.
By His Attorneys,
MORRISON MAHONEY LLP

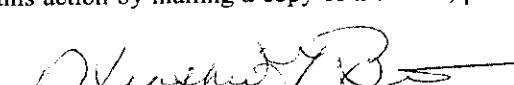

Dennis R. Anti, Esquire, BBO#: 545898


Heather G. Beattie, Esquire, BBO#: 643197
1500 Main Street, Suite 2400
P.O. Box 15387
Springfield, MA 01115-5387
(413) 737-4373, (413) 739-3125 (Fax)

Dated: December 22, 2004

CERTIFICATE OF SERVICE

I, Heather G. Beattie, Esquire of MORRISON MAHONEY LLP, 1500 Main Street, Suite 2400, P.O. Box 15387, Springfield, Massachusetts 01115-5387, hereby certify that on the 22nd day of December, 2004, I caused the foregoing document to be served upon all the parties in this action by mailing a copy of the same, postage prepaid via U.S. mail.


Heather G. Beattie, Esquire, BBO #643197